

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>WILLIAM W. SHEPARD,</p> <p>v.</p> <p>Respondent:</p> <p>HUERFANO COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 52662</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on July 20, 2010, James R. Meurer and Lyle D. Hansen presiding. Petitioner is protesting the 2009 classification of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

Huerfano County Schedule Nos. 32685, 32686, 14235

The subject property consists of three separate raw ground parcels. Schedule No. 32685 contains a total of 82.32 acres; Schedule No. 32686 contains a total of 35.62 acres; and Schedule No. 14235 contains a total of 50.0 acres for a total of 167.94 acres. The three parcels are located at the north end of the Town of Walsenburg. The parcels are adjacent to and have access from Interstate 25 and from U.S. Highways 85/87.

Petitioner is protesting the classification of vacant land for tax year 2009 and is requesting agricultural classification.

Petitioner testified that he purchased the property in 1995. He stated that the property had been zoned agricultural continuously during his ownership.

Petitioner testified that a valid grazing lease exists and has existed during his ownership period. Petitioner presented a lease with the Landlord indicated as Bill W. Shepard and the Tenant indicated as John C. Stroh, VI. The grazing lease term is two years extending from May 1, 2008 through April 30, 2010. The use of premises is for the grazing of cattle. The lease includes a total of 199 acres.

Petitioner testified that recent drought conditions have prevented any actual grazing because of the lack of water for the cattle. He stated that a dirt tank exists on the property but rainfall has been insufficient to fill the tank adequately for cattle. He testified that hauling water to the property is cost prohibitive. The last time that cattle were run on the property was in 2002. He planted yellow clover on a portion of the property to help stabilize the soil and to develop a crop to harvest. Because of the drought, there was not enough crop develop to harvest. He testified that the property has been annexed into the City of Walsenburg and rezoned as vacant land. He testified that the property is not marketable and cannot be developed because of a downturn in the local economy.

Petitioner is requesting agricultural classification for the subject property.

Respondent's appraiser, Mr. Nelson Holmes, testified that the Huerfano County Assessor values property based upon its present and actual use and does not consider the use of the subject property to be agricultural. Mr. Holmes testified that there is no evidence of cattle grazing on the property and that soil conditions may not support grazing of cattle. He testified that commercial growth has occurred immediately to the north of the subject with commercial use including a hotel chain.

Respondent's appraiser, Mr. Bruce Quintana, testified that the property is located on the northern edge of the City of Walsenburg and that all city utilities are within three-quarters of a mile of the property. He testified that site preparation is occurring to stop water erosion. Mr. Quintana testified that the subject had been classified as agricultural since 2001. He testified that the subject has prime location on the north edge of Walsenburg and that it is located adjacent to the main entrance to the city from the north. That entrance exists with an exit from Interstate 25. The property has good access from both Interstate 25 and U.S. Highways 85/87.

Respondent assigned an actual value of \$20,580.00 and vacant land classification to Schedule No. 32685, an actual value of \$22,120.00 and vacant land classification to Schedule No.32686, and an actual value of \$31,050.00 and vacant land classification to Schedule No. 14235.

Respondent presented sufficient probative evidence and testimony to prove that the subject property was properly classified as vacant land.

The Board considered the subject to be in a prime location for potential development with Interstate 25 access and commercial development to the north, and the developed area of the City of Walsenburg directly to the south. The subject has been annexed into the City of Walsenburg. City utilities are within a reasonable distance of the subject to further enhance the potential for development of the site. Respondent's photos indicated that a sign exists and has existed on the subject site stating "200 ACRES ALL OR PART DEVELOPMENT SITE."

Agricultural land is defined as, “A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section” Section 39-1-102(1.6)(a)(I), C.R.S. A farm is defined as “a parcel of land which is used to produce agricultural products that originate from the land’s productivity for the primary purpose of obtaining a monetary profit.” Section 39-1-102(3.5), C.R.S. A ranch is defined as “a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this subsection (13.5), ‘livestock’ means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit.” Section 39-1-102(13.5), C.R.S.

Petitioner did not convince the Board that the subject property “was used the previous two years and presently is used as a farm or ranch.” The Board gave weight to Mr. Shepard’s testimony that the last time cattle were run on the property was 2002. The Board gave weight to Mr. Holmes’ testimony indicating that there is no evidence of cattle grazing on the property. The Board gave weight to Mr. Quintana’s testimony that site preparation had occurred on the property to stop water erosion. Mr. Quintana testified that while evidence existed that clover seed had been planted on the property, the seed was broadcast and not sown, giving appearance that the planting was designed more for erosion control and dust mitigation. The Board concluded that the subject did not meet the definitions for agriculture use, as a farm, or as a ranch.

The Board concurred with Respondent that the subject parcels were properly classified as vacant land.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

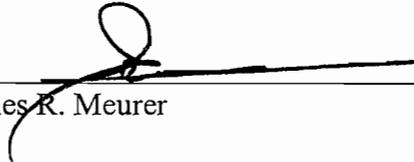
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

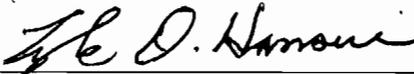
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

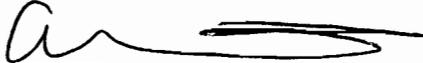
DATED and MAILED this 13th day of October 2010.

BOARD OF ASSESSMENT APPEALS


James R. Meurer


Lyle D. Hansen

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.


Amy Bruins

